



November 18, 2010

Ms. Marlene Dortch
Secretary
Federal Communication Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WC Docket No. 06-122; CC Docket No. 96-45

Dear Ms. Dortch:

I am writing on behalf of OnStar Corporation ("OnStar") to request that in the Federal Communication Commission's ("FCC" or "Commission") review of Universal Service Fund ("USF") contribution methodologies it retain the current revenues-based approach for telematics.

OnStar is the world's largest telematics provider, with over 5.6 million subscribers. OnStar's telematics services fall into two general categories: (1) core non-telecommunications safety and security services with automatic crash response ("ACR"), remote diagnostics and turn-by-turn navigation; and (2) optional prepaid hands-free wireless calling.¹ While a telephone number is assigned to each OnStar-equipped vehicle, actual telecommunications usage in the provision of telematics is extremely low, especially for OnStar's core safety and security services.² For its core safety and security services, OnStar purchases wireless airtime from a wireless telecommunications provider. That provider, in turn, imposes a surcharge on OnStar as an end-user of telecommunications equal to the provider's USF payments. By contrast, OnStar contributes directly to the USF when providing pre-paid hands-free wireless calling based on its interstate and international revenues for that telecommunications service.

The current revenues-based USF assessment regime has been fair and equitable in generating USF support from telematics providers such as OnStar. With respect to OnStar's core safety and security services, the revenues-based model allows for a USF

¹ See Revision of the Commission's Rules to Ensure Compatibility With Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, 18 FCC Rcd 21,531-2 (Oct. 21, 2003).

² OnStar's extremely low telecommunications usage in connection with its core safety and security services (reflecting usage only in emergencies or other non-routine instances) has been thoroughly documented. OnStar provided specific data on the minutes per month in the confidential appendix to an *ex parte* filing dated June 14, 2006. See OnStar *Ex Parte* in CC Docket Nos. 96-45, 98-171, 92-237, 99-200, 95-116, and 98-170 (June 14, 2006) ("*OnStar June 14, 2006 Ex Parte*"), Confidential Appendix.

payment that corresponds appropriately to OnStar's low telecommunications usage. With respect to OnStar's pre-paid hands-free wireless calling service, OnStar contributes directly to the USF at a percentage of revenues that is equivalent to that of other wireless telecommunications providers.

However, a change from the current revenues-based approach to a model based solely on telephone numbers or connections would be grossly unfair and detrimental to telematics providers like OnStar, and discourage the use of telematics by the public. First, an approach that imposes a monthly USF fee on telecommunications providers based on the amount of telephone numbers or connections they have would increase dramatically the USF fees paid by telematics providers to support their core safety and security services. OnStar has estimated, for example, that "a per-phone number USF surcharge of \$0.85 or \$1.00 per month would amount to an over 10,000 percent increase in the USF assessment borne by telematics companies,"³ and force OnStar to pay more in USF fees than the total amount of interstate telecommunications revenues generated by its core safety and security services, in violation of Section 254(d) of the Communications Act.⁴

Second, under a telephone number or connections-based regime, OnStar would be forced to pass on its increased USF costs to its customers. According to OnStar's price elasticity study, these USF-related cost increases "could lead to a significant reduction in telematics subscriptions, resulting in thousands fewer potentially life-saving calls being connected to PSAPs."⁵

Third, a telephone number or connections-based approach would be extremely difficult to implement with respect to OnStar's optional prepaid hands-free wireless calling service, and could require OnStar to pay USF fees for that service at a much higher rate of revenues than post-paid providers. Not all of OnStar's telematics customers purchase hands-free calling minutes and when they do they often purchase them in very small increments when compared to post-paid wireless users.⁶ Thus, under a telephone number or connections-based regime, OnStar's USF contribution for pre-paid hands-free calling could represent a higher percentage of its telecommunications revenues than that of post-paid wireless providers. Moreover, OnStar has no way of tracking when its customers' pre-paid hands-free calling minutes are utilized. Instead, the vehicle's telematics unit keeps track of the remaining minutes available for the customer's use and the expiration date of those minutes. Under such circumstances, OnStar has no way of knowing the number of telephone numbers or connections that are in use during any given month, making it difficult to determine the USF charge to impose on its customers. As OnStar has stated, under a telephone number or connections-based approach, "every customer would pay either too much or not enough," and OnStar "would not be able to avoid either under-recovering or over-recovering the associated cost."⁷

³ See OnStar Comments in WC Docket No. 06-122 (Nov. 26, 2008) at 4.

⁴ *Id.* at 7 (citing *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 434 (5th Cir. 1999)).

⁵ OnStar June 14, 2006 *Ex Parte* at 5.

⁶ *Id.* at 4.

⁷ *Id.* at 6.

On June 14, 2006, OnStar filed an *ex parte* letter encouraging the Commission to maintain its revenues-based USF contribution system and providing extensive detail regarding the serious problems that a telephone number-based regime would create for telematics providers. The June 12, 2006 *Ex Parte* letter is attached to this letter for your review.

The Commission's current revenues-based USF contributions regime has had an extremely positive impact on public safety and homeland security, and allowed for wide-ranging adoption of telematics services. The current regime, and a policy of regulatory restraint by the Commission, has also spurred the creation of a wide range of innovative new telematics services that are destined to save lives and provide other important benefits.⁸ The imposition of a telephone number or connections-based contribution methodology, however, would have a devastating impact on these telematics services, and set back consumer adoption.

The Commission's current revenues-based USF contribution model ensures that telematics providers contribute equitably to the USF as telecommunications consumers and pay an appropriate amount when providing telecommunications directly to the public. It is consistent with existing law and encourages the exploration and development of important new telematics services that enhance public safety. Altering this model, in favor of a telephone number or connections-based approach, would be devastating for telematics and public safety. For all of the reasons mentioned above, OnStar respectfully requests that the Commission maintain its current revenues-based USF contribution model with respect to telematics.

Sincerely,

/s/ Thomas Jeffers

Thomas Jeffers
Vice President for Public Policy

Attachment

cc: Sharon Gillett
Vickie Robinson
Carol Pomponio
Claudia Fox

⁸ For example, OnStar recently announced a service called Injury Severity Prediction ("ISP"). In the event of an accident, ISP-equipped vehicles will be able to predict whether the vehicle occupant was severely injured. Armed with this information, first responders can then decide whether to respond to the accident with red lights and sirens when traveling to the accident scene, transport the injured party to a Level-One Trauma Center, or place an emergency medical helicopter on standby. Another safety and security service developed by OnStar is Stolen Vehicle Slowdown ("SVS"). Using GPS technology, this service pinpoints the location of stolen vehicles and then works directly with police to facilitate vehicle recovery. SVS helps the police recover stolen vehicles, reduces the risk of damage to the vehicles, and helps to avoid high-speed chases that can result in injuries and fatalities.

ATTACHMENT

HOGAN & HARTSON

Hogan & Hartson LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
+1.202.637.5600 Tel
+1.202.637.5910 Fax

www.hhlaw.com

June 14, 2006

Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW
Washington, D.C. 20554

**RE: Federal-State Joint Board on Universal Service; CC Docket
Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170
[Contribution Proceeding]**

Dear Ms. Dortch,

On behalf of OnStar Corporation ("OnStar"), I am attaching two versions of the attached written *ex parte* filing: an unredacted version for inclusion in the public record; and a confidential, redacted version that OnStar respectfully requests be withheld from public inspection pursuant to Section 0.459 of the Commission's rules.

The unredacted, public version consists of the attached 10-page letter, which is being filed electronically in the above-referenced dockets. That letter includes no confidential information. The redacted, confidential version consists of that 10-page letter plus a one-page appendix that includes confidential trade secret information. We are sending copies of this confidential appendix to the FCC staff via e-mail, but we respectfully request that this appendix be withheld from public inspection. This document includes highly confidential commercial and financial trade secret information about OnStar's subscribers' usage patterns, elasticities of demand, and the likely impact of a per-line universal service contribution requirement on OnStar's subscribers. Public disclosure of such confidential data would have a damaging competitive impact on OnStar and would have no offsetting public benefits.

If you have any questions, please contact either of us.

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June 14, 2006
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Respectfully submitted,

Ari Q. Fitzgerald
David L. Sieradzki
Counsel for OnStar Corporation

Enclosures

cc: Dan Gonzalez
Michelle Carey
Scott Deutchman
Barry Ohlson
Scott Bergmann
Ian Dillner
Dana Shaffer
Tom Navin
Donald Stockdale
Tom Buckley
Jeremy Marcus
Vickie Robinson
Cheryl Callahan
Mark Seifert
Gina Spade
Greg Guice
Carol Pomponio
Jim Lande

HOGAN & HARTSON

Hogan & Hartson LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
+1.202.637.5600 Tel
+1.202.637.5910 Fax

www.hhlaw.com

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**RE: Federal-State Joint Board on Universal Service; CC Docket
Nos. 96-45, 98-171, 90-571, 92-237, 99-200, 95-116, and 98-170
[Contribution Proceeding]**

Dear Ms. Dortch,

OnStar Corporation (“OnStar”) respectfully submits this *ex parte* letter regarding the universal service contributions proceeding. In this letter, we provide background on OnStar and its telematics and prepaid wireless resale services; explain the special circumstances affecting these services; and offer alternative, and we believe, more effective methodologies for contribution assessments with respect to these services, in the context of a phone number-based methodology for the industry as a whole.

Chairman Martin has publicly expressed his support for basing the universal service contribution methodology on telephone numbers. This letter is not intended to challenge adoption of such an approach as a general matter. However, we believe, a phone number-based methodology should not be applied where it would likely have a substantially harmful impact on public safety and homeland security services, including telematics. Moreover, we believe phone number-based assessments cannot and should not be applied to certain specially-situated services and customers, such as those that do not use phone numbers (*e.g.*, special access or prepaid phone cards), as well as those that use phone numbers in a manner that differs considerably from the manner in which numbers are used by most other participants in the industry – including telematics and prepaid wireless services.

OnStar respectfully submits that telematics and prepaid wireless services would be subject to extraordinarily heavy burdens under a phone number-based system. We believe the FCC is compelled by law to take this problem into account in designing its contribution methodology. Where the FCC adopts a methodology resulting in a “heavy inequity” and “prohibitive costs” on a certain class of service providers, the courts have held that such an inequity cannot “simply be dismissed by the agency as a consequence of its administrative

discretion” and that doing so is “arbitrary and capricious and manifestly contrary to the statute.” *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 434 (5th Cir. 1999) (1997 universal service contributions scheme failed to account for undue burdens on a certain class of providers), quoting *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984); accord, *AT&T Corp. v. Public Util. Comm’n of Texas*, 373 F.3d 641, 646 (5th Cir. 2004). In this regard, OnStar agrees with others that the FCC is legally obligated to select an alternative methodology in the context of telematics and prepaid wireless services. See Mercedes Benz USA, LLC *ex parte* letter, CC Docket Nos. 96-45 *et al.* (filed April 12, 2006); ATX Group, Inc. *ex parte* letter, CC Docket Nos. 96-45 *et al.* (filed April 19, 2006); Verizon & Verizon Wireless *ex parte* presentation, CC Docket No. 96-45 (filed as attachment to letters dated March 3, 2006 and March 28, 2006).

As discussed in further detail below, the Commission would avoid this dilemma by either exempting the phone numbers that carriers provide for telematics and other public safety services from per-number USF contributions; or, in the alternative, retaining a revenue-based contribution methodology as a “technologically driven exception” that would be equally applicable to telematics and prepaid wireless service, within the overall context of a generic per-phone number assessment system.

Background on OnStar and Its Services

1. *Telematics.* OnStar, a wholly-owned subsidiary of General Motors, is a leader in the telematics industry, with over four million subscribers. OnStar provides telematics service and factory-installed equipment on a broad range of GM and other manufacturers’ vehicles. The cornerstone services for telematics are public safety-related; telematics cannot be used to originate or receive calls over the PSTN. Specifically, OnStar’s telematics equipment (i) automatically detects vehicle crashes, airbag deployments, and user-initiated emergency calls; (ii) uses GPS technology to ascertain the precise location of the vehicle; and (iii) communicates the information about the location and nature of the emergency to a dedicated, 24x7 call center, where advisers in turn, as appropriate, (iv) communicate that information to PSAPs throughout the country.

The Commission has recognized that “telematics systems may offer location capabilities that are either equivalent, or superior, to” standard wireless E-911 systems, and that “[t]elematics call centers provide PSAPs with more accurate location information and on a consistent nationwide basis.” *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Report and Order and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 25340, ¶ 72 (2003) (“*Telematics E-911 Order*”). Telematics service is the only wireless service or technology that currently is able to transmit precise location data regarding emergencies ubiquitously to every PSAP in the United States.

OnStar’s telematics service also enables users in vehicles to access, real-time vehicle diagnostics and monitoring, roadside assistance, directions, and other information services as well as remote door-unlock and stolen vehicle location service. Currently, OnStar assists its over four million subscribers with about 12,000 emergencies, 1,500 automatic crash and airbag deployment notifications, 46,000 door-unlocks, 500 stolen vehicle location assists, and 37,000 remote diagnostics per month. The first year of service is included in the price of the vehicle

after which OnStar's current rate for telematics service is \$16.95 per month. General Motors has announced plans to make OnStar standard on virtually all retail vehicles in 2008.

OnStar's telematics offering is an information service, not telecommunications. As described above, it "generat[es]," "acquir[es]" and "process[es] GPS location information and other vehicle-generated data and makes such "information" available for the benefit of its customers "via telecommunications," consistent with the definition of "information service" in Section 3(20) of the Communications Act. The Commission has found that "units providing only telematics service cannot transmit and receive commercial wireless calls between the operator of the vehicle and other wireline or wireless end users. The voice and data communications are transmitted only to the telematics call centers. Thus, [the] telematics units provided by OnStar that are not capable of providing wireless calling service are not within the [CMRS] definition of Section 20.3, and therefore, not subject to the E911 requirements of section 20.18(g) of the Commission's rules." *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order, 18 FCC Rcd 21531, ¶¶ 17-18 (2003) ("*OnStar E-911 Order*"). Moreover, unlike interconnected VoIP services, OnStar's standard telematics service does not offer the same capabilities as traditional CMRS or wireline service, and therefore "does not provide competition [to traditional CMRS or wireline exchange service]." *Telematics E-911 Order*, ¶ 79.

In order to provide its telematics service, OnStar purchases airtime from underlying mobile wireless telecommunications carriers to establish a dedicated communications link between OnStar's call centers and the in-vehicle telematics unit. The Commission has held that this type of "standard telematics service does not meet [the criteria for a service that interconnects with the PSTN] because it relies solely on a dedicated link to the call center[.]" *Telematics E-911 Order*, ¶ 71. OnStar, as an information service provider, does not report revenues from its telematics service, nor does it remit contributions based on those revenues directly to the universal service fund. Rather, OnStar's underlying wireless telecommunications service providers are responsible for such reports and payments.

OnStar's wireless telecommunications service providers assign a unique phone number to the telematics unit on each OnStar-equipped vehicle – either special "500" numbers, or numbers in specific geographic Number Plan Areas (NPAs) – to enable those carriers' networks to establish "a 'private' dedicated line" for each end user. *Telematics E-911 Order*, ¶ 79 (emphasis in original). Nonetheless, because telematics by its nature is primarily a safety and security service that uses only occasional, short-duration communications, OnStar's telematics subscribers use an extremely small amount of airtime per phone number -- on average, less than 2 minutes per month per phone number -- in comparison to the almost 700 minutes per month per phone used by standard post-paid wireless services customers. Written Testimony of Paul W. Garnett, Asst VP, Regulatory Affairs, CTIA, before the House Rural Caucus (February 15, 2006), at 2 (available at http://www.house.gov/johnpeterson/ruralcaucus/telecomtaskforce/garnett_021506.pdf).

2. *Prepaid Hands-Free Calling Service*. As an adjunct to its core call center-based telematics services, OnStar also offers most of its subscribers the option of purchasing prepaid minute bundles for its Hands-Free Calling service. This prepaid wireless telecommunications service enables users to place and receive hands-free mobile calls while in the vehicle to or from any point on the PSTN. OnStar provides its PSTN-interconnected Hands-Free Calling service

using the same embedded telematics units used to deliver its core telematics services, and the same phone numbers and airtime capacity supplied on a wholesale basis by its CMRS carrier suppliers. Hands-free dialing is accomplished through the use of voice recognition software.

OnStar's prepaid wireless subscribers pay in advance for a specified amount of airtime, and that airtime can be used by the subscribers within 12 months of the date of purchase. OnStar does not use a centralized system to track the airtime usage on each telematics unit. Instead, the vehicle-based telematics unit keeps track of the number of minutes for which the subscriber has paid, deducts minutes as they are used, and blocks Hands-Free Calling calls into or out of the vehicle once the subscriber's account reaches zero or the 12-month period or the subscription expires, whichever is first. Thus, unlike some other prepaid wireless providers, OnStar not only "cannot determine the number of handsets that may be used by customers at a point in time," *Federal-State Joint Board on Universal Service*, Report and Order and Second Notice of Proposed Rulemaking, 17 FCC Rcd 24952, ¶ 76 n.169 (2002) ("*Contributions Order and NPRM*"), *subsequent history omitted*, but also has no real-time way to "determine whether [particular] connections have been used in a given month." *Id.* A large proportion of OnStar's Hands-Free Calling subscribers do not place or receive any calls during a given month. Unlike conventional post-paid mobile wireless services, in which users frequently subscribe to airtime packages of 500 minutes or more per month, the average number of Hands-Free Calling minutes purchased by OnStar subscribers using the Hands-Free Calling option in any given month is less than 20 minutes.

Impact of a Numbers-Based Assessment Methodology on OnStar's Services

In crafting a phone number-based contribution methodology for the telecommunications industry in general, OnStar believes the Commission must take into account the potentially inequitable and damaging impact that a phone number-based system would have on telematics and prepaid wireless services.

1. *Telematics*. In the case of telematics services, the underlying wireless carriers that provide wireless airtime to telematics providers such as OnStar receive very limited revenues from airtime usage, given the very small quantity of airtime used in proportion to each assigned phone number. As a result, if a phone number-based system were adopted, and if OnStar's underlying suppliers of wireless airtime were to pass through their contribution costs as surcharges to OnStar, OnStar would be subject to a huge increase in OnStar's USF surcharge obligations.

The following hypothetical example illustrates the impact on telematics services of a change to per-phone number assessments. Let us suppose that, under the current system, each of OnStar's 4 million telematics subscribers uses, on average, 2 minutes of airtime per month, and assume that OnStar remits 10¢ per minute to the CMRS carriers that supply it with mobile wireless service. In this hypothetical case, the underlying wireless carriers' monthly universal service contributions that could be passed through as surcharges on OnStar's telematics usage would be less than \$25,000 per month under the current system (calculated by multiplying 4 million users x 2 minutes per month x 10¢ per minute x 28.5% wireless interstate safe harbor x

10.5% contribution factor).^{1/} By contrast, under a phone number-based system, suppose that a \$1.00 universal service contribution per assigned phone number were assessed on the wireless carriers and passed through to telematics service providers such as OnStar. As a result, in this hypothetical, OnStar's USF contribution would skyrocket from \$25,000 to \$4 million per month – a 16,000% increase.

An increase of such an order of magnitude would be unconscionable, particularly with respect to a public safety-related service like telematics, and could raise the cost of telematics to a level that would discourage vehicle owners from subscribing to this optional service. OnStar has conducted pricing elasticity studies with respect to its consumers, and has found that a price increase of this magnitude could lead to a significant reduction in telematics subscriptions, resulting in thousands fewer potentially life-saving calls being connected to PSAPs. (The specific elasticity figures and impacts are discussed in the attached confidential appendix.) This price-induced disincentive to purchasing telematics will likely become more acute as telematics becomes more widely available not just on luxury and large vehicles, but also on mid-size and smaller vehicles purchased by more price-conscious consumers.

2. Prepaid Hands-Free Calling Service. For OnStar's prepaid Hands-Free Calling service, a phone number-based assessment system would raise similarly significant equity issues, as well as implementation difficulties. As Verizon and Verizon Wireless recently observed:

It is more difficult for prepaid wireless providers to pass through a monthly per number assessment because they do not send monthly bills to customers. Since prepaid wireless customers do not buy service by the month, but instead by blocks of minutes, often in low amounts, a per-month assessment is infeasible.

Verizon & Verizon Wireless *ex parte* presentation, CC Docket No. 96-45 (filed as attachment to letters dated March 3, 2006 and March 28, 2006), at 3. OnStar emphatically agrees.

The implementation difficulty noted by Verizon and Verizon Wireless – prepaid wireless providers' inability "to pass through a monthly per number assessment because they do not send monthly bills to customers" – is aggravated in the case of OnStar. As a non-facilities based reseller, OnStar does not use a network or other centralized system to track whether a subscriber's Hands-Free Calling account is active (*i.e.*, has minutes available to make calls) or the usage of prepaid minutes during a specified period of time. Instead, OnStar operates on a decentralized basis where the telematics unit in the vehicle keeps track of the remaining amount of prepaid calling minutes available for the customer's use and the expiration date of those minutes. OnStar does not have month-end access to data regarding which subscribers have prepaid minutes remaining for Hands-Free Calling use. *Cf. Contributions Order and NPRM*, ¶ 76.

Moreover, a prepaid wireless provider would have no way to recover the cost of a monthly assessment per phone number in an "equitable and nondiscriminatory" manner from prepaid customers corresponding to each customer's purchases. *Id.*, ¶ 42. This would undercut the Commission's "goal of promoting transparency for the end user in order to facilitate

^{1/} These figures above are purely hypothetical; the actual figures are included in the attached confidential appendix.

informed customer choice.” *Id.*, ¶ 50. Prepaid wireless customers pay for service in increments of a specified number of minutes, rather than on a monthly basis. Some customers purchase additional minutes only infrequently, while higher-volume users purchase minutes more frequently. If a monthly fee per phone number were imposed, every customer would pay either too much or not enough, and the prepaid wireless provider would not be able to avoid either under-recovering or over-recovering the associated cost.

For these technological and other reasons, OnStar’s ability to continue offering its Hands-Free Calling service would be severely threatened if it were required to contribute a monthly amount per phone number. OnStar urges the Commission to avoid imposing this dilemma, both as a matter of equity and as a matter of public safety. In this regard, it is significant that three states (New York, New Jersey and Connecticut) and the District of Columbia have determined that, for safety reasons, drivers may not place wireless calls while the vehicle is in motion unless they can do so in a hands-free manner. A contribution system that threatens OnStar’s ability to provide its Hands-Free Calling option would undercut these highway safety mandates, and would be unnecessary – particularly in light of the alternative policy options discussed below.

Proposed Solutions

1. *Telematics/Public Safety Exemption.* Rather than imposing a monthly contribution charge on wireless carriers with respect to each phone number used for telematics service, the Commission should consider exempting wireless carriers from universal service contributions with respect to phone numbers that they provide for telematics. In particular, the Commission has already adopted a narrow exemption from contribution requirements for public safety and other governmental agencies, as well as entities providing services *exclusively* to such agencies, “because of the important public safety and welfare functions for which these services are used.” *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776, ¶ 800 (1997), *subsequent history omitted*. In view of the significant public safety and welfare benefits provided by telematics, the Commission should consider broadening its existing exemption to include *all* providers of telecommunications to telematics. Thus, in the context of a phone-number based universal service assessment system, telecommunications carriers that provide telephone numbers to telematics providers would not have to pay contributions with respect to the phone numbers provided, and carriers would not be allowed to impose monthly USF surcharges on such entities. Like the existing exemption for local exchange services that carriers provide to low-income (Lifeline) consumers, an exemption for services that carriers provide to telematics providers would promote the Commission’s fundamental public policy commitments – in this case, its public safety and homeland security goals.

Moreover, as noted above, telematics service providers are end users, rather than suppliers, of interconnected communications services, and must not (and cannot as a legal matter) be required to pay contributions directly to USAC. This distinguishes core telematics providers from some other (presumably) “information service providers” such as VoIP companies. As noted above, telematics service is completely distinguishable from interconnected VoIP service. Unlike VoIP, OnStar’s core telematics service addresses a set of consumer needs (*i.e.*, safety and security) that have nothing to do with PSTN-interconnected telecommunications. Indeed the Commission has determined that telematics service does not compete with or substitute for telecommunications services. *E-911 Scope Order*, ¶ 79. Unlike interconnected VoIP service, OnStar’s telematics offering is not interconnected with the PSTN,

and uses communications only for internal purposes (*i.e.*, to establish private dedicated links that enable telematics units on vehicles to exchange information with call centers).

In addition, when wireless carriers assign phone numbers to telematics providers for services that do not establish “connections” to the PSTN, the Commission should not consider those phone numbers to be “working telephone numbers.” *Contributions NPRM*, ¶ 72. The Commission recognizes that some phone numbers may not be “working” numbers, since they are not interconnected to the PSTN. *See id.*, ¶ 97 & n.204. For example, telephone companies may reserve certain phone numbers for administration or testing of their networks, 47 C.F.R. § 52.15(f)(1), or for future use (*e.g.*, for “warm dial tone” in vacant residential premises), *Federal-State Joint Board on Universal Service*, 18 FCC Rcd 15090, ¶ 16 (2003), but those are not “working” phone numbers. Similarly, phone numbers that wireless carriers assign to providers of telematics are not used to provide interconnected service to the PSTN and thus should not be deemed “working” numbers for USF contribution purposes.

2. *Alternative Methodology for Calculating Contributions Relating to Telematics and Prepaid Wireless.* In the alternative, under a phone number-based assessment system, the Commission could establish an equitable treatment exception so that a different methodology would be used to assess contributions with respect to (1) services that carriers provide to telematics providers, and (2) prepaid wireless carriers, since, as discussed above, it would be unfair, inequitable, and infeasible to force those carriers to pay phone number-based assessments. A similar exception could apply to services that carriers provide to other entities, like universities, with very low ratios of monthly telecommunications usage per phone number.

Contribution assessments for prepaid wireless service could be based on an “equivalency ratio” comparable, but not identical, to the contributions paid by traditional, post-paid wireless carriers. The Commission could achieve “equivalency” by retaining the existing revenue-based contribution system for telecommunications services that carriers provide to telematics companies (and possibly similarly-situated others), as well as for telecommunications services provided by prepaid wireless telecommunications services. The revenue-based methodology would avoid excessive and disproportionate contribution surcharges for these categories. To make the contribution level in these cases “equivalent” to the amounts paid by typical users, the Commission could set the percentage of revenue contribution rate at the same level as the percentage of telecommunications revenues that are assessed upon traditional, post-paid wireless telecommunications customers through phone number-based assessments.

Several states have devised similar plans for prepaid wireless carriers to pay a percentage of revenue equivalent to the monthly per-line E-911 assessment paid by traditional, post-paid wireless carriers. Both Ohio and North Carolina require post-paid wireless carriers to pay a monthly charge per-user to cover certain costs associated with E-911. These states have recognized, however, that a monthly per-user charge cannot work in the case of prepaid wireless carriers, due to their technology, prepaid business model and corresponding usage patterns, and instead have developed equivalent percentage of revenue charges. In Ohio, traditional, post-paid wireless carriers are required to pay 32¢ per month. Based on a reasonable assumption that such post-paid wireless carriers receive, on average, \$50 per month from each user, Ohio has set its E-911 assessment for prepaid wireless carriers at an equivalent level based on percentage of revenues. Thus, prepaid subscribers pay a percentage surcharge of 32¢ / \$50 or 0.64% of revenues. *See Ohio Rev. Code* § 4931.61(A). Similarly, in North Carolina, traditional, post-paid

wireless carriers are generally required to pay 70¢ per month to recover certain costs related to wireless E-911. Prepaid wireless carriers' payments are set as a percentage revenues at an equivalent level: 70¢ / \$50 or 1.4% of revenues. *See* N.C. Sess. Law 2005-439, revising G.S. § 62A-3(b 1). Prepaid carriers can recover these assessments as percentage surcharges upon the payments that subscribers remit when they purchase usage.

With respect to federal universal service contributions, the amount could be set as follows: Suppose that most carriers and most users (indirectly) are paying \$1.00 per phone number per month. Further suppose that the average interstate telecommunications revenue per user telephone number across the industry is \$10.00 per month. ^{2/} Under this equivalency rule, prepaid wireless carriers would contribute \$1 / \$10 = 10% of their interstate revenues for those services. In the alternative, if the average total (interstate plus intrastate) telecommunications revenues per user across the industry were \$35.00 per month, then prepaid wireless carriers would pay \$1 / \$35 = 2.857% of total (interstate plus intrastate) telecommunications revenues for those services. Such percentage contributions could be assessed at the point of sale, as they are today. An equivalency ratio structured along these lines would be equitable, given that OnStar and similar pre-paid wireless providers receive substantially less telecommunications revenue per phone number than traditional post-paid wireless carriers.

By contrast, it would be unfair and unreasonable to subject prepaid wireless providers to a per-phone number assessment set at 25 percent of the standard monthly assessment per phone number as suggested by the Cellular Telecommunications & Internet Association. *See, e.g.,* CTIA-The Wireless Association *ex parte* letter, CC Docket No. 96-45 (Feb. 17, 2006), attachment at 5; T-Mobile *ex parte* letter, CC Docket Nos. 01-92 and 96-45 (April 4, 2006), at 4. Even a 25 percent adjustment could result in increasing the contribution payments of a prepaid wireless service provider like OnStar by an enormous amount. This would be hardly any less unreasonable than imposing the standard monthly amount per phone number. Moreover, as noted above, it would be virtually impossible, as a technical matter, to apply a per-phone number assessment to prepaid wireless services, because prepaid providers do not send monthly bills to customers and do not have monthly data regarding any particular end user's usage.

OnStar's proposed "equivalency ratio" approach would in no way "contradict a numbers-based approach." T-Mobile *ex parte* letter at 4 & n.4. Rather, in the context of a phone number based system for the industry as a whole, this revenues-based equivalency ratio plan for a narrowly defined class of entities would avoid imposing a "heavy inequity" on these entities, which would be "arbitrary and capricious and manifestly contrary to the statute." *Texas Office of Pub. Util. Counsel v. FCC*, 183 F.3d at 434.

The same "equivalency ratio" approach outlined above for prepaid wireless could also be applied to wireless service provided to telematics providers, for similar reasons. As with prepaid wireless providers, adopting an "equivalency ratio" for wireless service sold to telematics providers would impose a contribution burden on telematics companies that is commensurate with that imposed on others, using a revenue percentage "surrogate" that is equivalent to the per-

^{2/} Note that OnStar supports the continued use of a "safe harbor" mechanism for wireless carriers to estimate their percentage of interstate usage, as an alternative to conducting detailed traffic studies that is easier to implement.

phone number amount paid by others. This would avoid the manifestly unreasonable imposition of extraordinarily high increases in contribution burdens upon a public safety service like telematics. This “equivalency ratio” approach would also avoid the need to devise an appropriately adjusted per-phone number assessment for telematics: if a phone number based assessment were applied to providers of telematics service like OnStar, it would have to be adjusted to 1 percent or less of the standard monthly amount, rather than 25 percent as proposed by CTIA and T-Mobile for prepaid wireless service, since (as discussed above) OnStar’s telematics customers, on average, utilize substantially less than 1 percent of the usage of traditional wireless post-paid providers.

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In sum, for the reasons stated above, OnStar believes the Commission should not apply a phone number-based contribution methodology to services that carriers supply to telematics companies, or to services provided by prepaid wireless carriers. The Commission should instead: (1) adopt a telematics/public safety exemption for services purchased by telematics providers, and retain a revenue-based contribution methodology for prepaid wireless service providers as a “technologically driven exception” within the overall context of a generic per-phone number assessment system, or (2) alternatively, apply the revenue-based “exception” to both types of services.

If you have any questions, please contact either of us.

Respectfully submitted,

Ari Q. Fitzgerald
David L. Sieradzki
Counsel for OnStar Corporation

Enclosures

cc: Dan Gonzalez
Michelle Carey
Scott Deutchman
Barry Ohlson
Scott Bergmann
Ian Dillner
Dana Shaffer
Tom Navin
Donald Stockdale
Tom Buckley
Jeremy Marcus
Vickie Robinson
Cheryl Callahan

Marlene Dortch
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Mark Seifert
Gina Spade
Greg Guice
Carol Pomponio
Jim Lande